

TITLE 178 ENVIRONMENTAL HEALTH

CHAPTER 10 LICENSURE OF WATER WELL AND PUMP INSTALLATION CONTRACTORS
AND CERTIFICATION OF WATER WELL DRILLING AND PUMP
INSTALLATION SUPERVISORS, AND WATER WELL MONITORING AND
NATURAL RESOURCES GROUND WATER TECHNICIANS

10-001 SCOPE AND AUTHORITY: These regulations apply to the licensure of water well contractors and pump installation contractors and to the certification of water well drilling supervisors, pump installation supervisors, natural resources ground water technicians and water well monitoring technicians. The authority for these regulations is found in. Neb. Rev. Stat. §§ 46-1201 to 46-1241.

10-002 DEFINITIONS

Act means Neb. Rev. Stat. §§ 46-1201 to 46-1241, known as the Water Well Standards and Contractors' Licensing Act.

Board means the Water Well Standards and Contractors' Licensing Board.

Business Engaged in the Installation of Pumps and Pumping Equipment means any activity or enterprise undertaken for profit or otherwise which involves the installation of pumps and pumping equipment on water wells. The term shall not include any such activity carried out by an individual on land owned by him/her and used by him/her for farming, ranching or agriculture purposes or as his/her place of abode.

Business Engaged in the Construction of Water Wells means any activity or enterprise undertaken for profit or otherwise which involves the construction of water wells. The term shall not include any activity carried out by an individual on land owned by him/her and used by him/her for farming, ranching or agricultural purposes or as his/her place of abode.

Construction of Water Wells means and includes all acts necessary to make a water well usable for the purpose for which it is intended including, without limitation, the siting of and excavation for the water well and its construction, alteration, or repair, but excluding the installation of pumps and pumping equipment.

Department means the Department of Health and Human Services Regulation and Licensure.

Good Cause means a substantial reason consistent with the purposes of the Act.

Installation of Pumps and Pumping Equipment means the procedure employed in the placement and preparation for operation of pumps and pumping equipment at the water well location, including connecting all wiring to the first control and all construction or repair involved in making entrance to the water well, which involves the breaking of the well seal.

Installed Water Well Equipment means but is not limited to equipment that may be set up for use on a water well, such as main line check valves, vacuum relief valves, chemigation devices, and flow meters.

Natural Resources Ground Water Technician means any individual employed by a natural resources district and engaged in the inspection of chemigation systems, measuring and recording static water levels, inspection and servicing of flow meters, and water sampling practices and techniques. Natural resources ground water technician does not include: (1) An individual who constructs a water well or installs or repairs pumps or pumping equipment or a water well; (2) a water well monitoring technician; or (3) an individual who carries out the measurement, sampling, or inspection of a water well which is on land owned by him/her and used by him/her for farming, ranching, or agricultural purposes or as his/her place of abode.

Person means any: Individual; partnership; limited liability company; association; public or private corporation; trustee; receiver; assignee; agent; municipality or other governmental subdivision; public agency; other legal entity; or any officer or governing or managing body of any public or private corporation, municipality, governmental subdivision, public agency, or other legal entity.

Pump Installation Contractor means the principal officer, director, manager, or owner-operator of any business engaged in the installation of pumps and pumping equipment or the decommissioning of water wells. Pump installation contractor does not include: (1) an individual who installs or repairs pumps and pumping equipment for a water well, or who decommissions a driven sandpoint well, which is on land owned by him/her and used by him/her for farming, ranching, or agricultural purposes or as his/her place of abode; (2) a pump installation supervisor; or (3) an individual who repairs pumps and pumping equipment at a location other than a water well location.

Pump Installation Supervisor means any individual engaged in the installation of pumps and pumping equipment or the decommissioning of water wells. A pump installation supervisor may have discretionary and supervisory authority over other employees of a pump installation contractor. Pump installation supervisor does not include: (1) an individual who installs or repairs pumps or pumping equipment for a water well, or decommissions a driven sandpoint well, which is on land owned by him/her and used by him/her for farming, ranching, or agricultural purposes or as his/her place of abode; (2) an individual who repairs pumps and pumping equipment at a location other than a water well location; or (3) any licensed pump installation contractor.

Pumps and Pumping Equipment means any equipment or materials utilized or intended for use in withdrawing or obtaining ground water including, but not limited to, seals, tanks, fittings, and controls.

Sampling Event means the collection of a single sample or a single set of samples per each site visit from a water well for the purpose of water quality analysis.

Supervision or its derivatives means the ready availability of a person licensed/certified under the Act for consultation and direction of the activities of any person not licensed/certified who assists in

the construction of a water well or the installation of pumps and pumping equipment. Contact with the licensed contractor or certified supervisor by telecommunication will be sufficient to show ready availability.

Water Sampling Practices means acts by which ground water samples are obtained from a water well or pumping system in which the water well seal is broken. The term shall generally include any act which serves to protect the integrity of the water well or the quality of the ground water and may include preparation of the sampling point, use of sampling equipment, and certain aspects of sample collection. Water well monitoring technicians may temporarily employ sampling equipment or pumping equipment in a water well for each and every sampling event after which time the equipment must be removed. Natural resources ground water technicians may temporarily employ sampling equipment. Employment of sampling equipment for longer periods of time or pumping equipment may only be carried out by a licensed pump installation contractor or certified pump installation supervisor and is deemed to be pump installation rather than water sampling practices.

Water Sampling Techniques means the procedure(s) and/or method(s) by which water sampling practices are conducted.

Water Well means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting water into the underground water reservoir. Water well shall not include any excavation made for obtaining or prospecting for oil or natural gas, or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission.

Water Well Contractor means the principal officer, director, manager, or owner-operator of any business engaged in the construction or decommissioning of water wells. Water well contractor does not include: (1) an individual who constructs a water well, or who decommissions a driven sandpoint well, which is on land owned by him/her and used by him/her for farming, ranching, or agricultural purposes or as his/her place of abode; or (2) a water well drilling supervisor.

Water Well Drilling Supervisor means any individual engaged in the construction or decommissioning of water wells. A water well drilling supervisor may have discretionary and supervisory authority over other employees of a water well contractor. Water well drilling supervisor does not include: (1) an individual who constructs a water well, or decommissions a driven sandpoint well, which is on land owned by him/her and used by him/her for farming, ranching, or agricultural purposes or as his/her place of abode; or, (2) any licensed water well contractor.

Water Well Monitoring Technician means any individual engaged solely in the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment, pumping systems. Water well monitoring technician does not include: (1) An individual who constructs or decommissions a water well or installs or repairs pumps or pumping equipment, or a water well; or (2) a natural resources ground water technician, or (3) an individual who carries out the measurement, sampling, or inspection of a water well which is on land owned by him/her and used by him/her for farming, ranching, or agricultural purposes or as his/her place of abode.

Well Repairs means any change, replacement, or other alteration of any water well, pump or pumping equipment or any other activity which requires a breaking or opening of the well seal.

Well Seal means an arrangement or device used to cap a water well or to establish and maintain a junction between the casing or curbing of a water well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the water well.

10-003 ISSUANCE OF LICENSES/CERTIFICATES

10-003.01 When Required: No water well shall be constructed, no pump or pumping equipment shall be installed, and no water well shall be decommissioned by a person engaged in the construction of water wells or installation of pumps and pumping equipment unless the construction, installation, or decommissioning is carried out or supervised by a licensed water well contractor, water well drilling supervisor, pump installation contractor or pump installation supervisor, and in addition to the provisions of in Neb. Rev. Stat. § 46-1233 of the Water Well Standards and Contractors' Licensing Act, the opening of a water well or the breaking of the seal of a water well may be carried out by the owner of the water well or by any of the following in the course of their employment:

1. A certified water well monitoring technician,
2. A certified natural resources ground water technician,
3. A certified operator of a public water system or someone under his/her supervision; or
4. A state electrical inspector.

10-003.02 Qualifications for Licensure as a Water Well or Pump Installation Contractor: In order to obtain a license as a water well contractor or pump installation contractor, a person must:

1. Be at least the age of majority;
2. Produce satisfactory evidence of good moral character;
3. Have demonstrated professional competence by passing the examination for licensure prescribed by the Board unless the person qualifies for a temporary license as provided in 178 NAC 10-006.08;
4. Pay the appropriate application and license fees set by the Board;
5. Furnish proof to the Department that there is in force a policy of public liability and property damage insurance issued to the applicant in at least the sum of \$100,000.00; and
6. Otherwise comply with the Act and all standards, rules and regulations adopted and promulgated pursuant to the Act.

10-003.03 Qualifications for Certificate of Competency as a Water Well Drilling Supervisor, Pump Installation Supervisor, Natural Resources Ground Water Technician or Water Well Monitoring Technician: In order to obtain a certificate as a water well drilling or pump installation supervisor, or a natural resources ground water technician, or a water well monitoring technician, a person must:

1. Have demonstrated professional competence by passing the examination prescribed by the Board for the certificate.
2. Pay the appropriate license/certification fee(s) and the application fee established by the Board; and
3. Otherwise comply with the Act and all standards, rules and regulations promulgated pursuant to the Act.

10-003.04 Application: A person seeking initial licensure/certification under the Act must submit an application to the Department for licensure/certification. The applicant may construct an application or obtain an application form from the Department. The application must include the applicant's name; address; telephone number; social security number; the type of license/certificate desired; the name, address and telephone number of the business with which the applicant is/will be engaged; all addresses and phone numbers of each business location; the nature of the business; the person's affiliation with the business; the name of all partners in a partnership and the business address and telephone number of each partner; if a corporation, the officers and directors of that corporation and the address and telephone number for each office of that corporation within the state. Applicants for licensure as a water well and/or pump installation contractor must list the amount of public liability and property damage insurance carried, the name(s) of the insurance company(ies), and attach proof of current insurance. Applicants must also attach proof of age of majority. Applicant must indicate whether or not s/he has ever been convicted of any crime; if so, the name of the crime, the date of conviction, the name of court and location of court. The applicant must also indicate whether or not s/he is licensed/certified in any other state and whether or not action has been taken to suspend or revoke the license/certificate. If action has been taken, the applicant must state what action, the date of action, the name and address of the entity taking action. The applicant for licensure must also attach completed affidavits of moral character from two persons engaged in the occupation for which the applicant seeks licensure. The applicant must indicate which exam(s) s/he needs to take: the Nebraska exam, the water well monitoring technician exam, the natural resources ground water technician exam, the pump installation exam, the general drilling exam and/or the environmental drilling exam. The application must include the notarized signature of the applicant.

10-003.04A Reinstatement: For reinstatement after discipline, the applicant must indicate if the license/certificate was refused renewal, suspended or revoked; the previous license/certificate number and the profession for which the license/certificate was held; the date of disciplinary action; a narrative statement of all reasons upon which the applicant bases his/her claim that good cause exists for reinstatement of the license/certificate; proof of restitution to all persons suffering damage or injury as a result of the actions for which the disciplinary measure was imposed; for each category of license/certificate for which the applicant seeks reinstatement, 2 notarized recommendations from persons in the State of Nebraska who hold licenses/certificates under the Water Well Standards and Contractors' Licensing Act; for each category of license/certificate in which the applicant requests reinstatement, at least 2 notarized recommendations of persons having personal knowledge of the pertinent activities in which the applicant has engaged since the disciplinary measure was imposed; and any other evidence supporting the reasons given that there is good cause for reinstatement.

10-003.04B Relicensing/Recertification: For relicensing/recertification after expiration, the applicant must provide the previous license/certificate number and the profession for which the reinstatement is requested; and must retake and pass the examination.

10-003.04C Hardship Exemption/Special Arrangements: Persons requesting a hardship exemption for licensure/certification must indicate the reasons for the request. Persons requesting special arrangements for administering the exam must list the reasons for the request and the special arrangements sought.

10-003.04D Fees: The applicant must include the appropriate license/certificate fee(s) with the application.

10-003.04E Reapplication: The applicant for re-examination may construct an application or obtain an application form from the Department. The application must include the applicant's name, address, phone number, social security number, business name, business address and business phone number, the exam(s) the applicant desires to re-take, the applicant's current license/certificate number (if applicable), the examination date requested, and the applicant's signature indicating s/he is the person referred to in the application, that s/he completed the application and that the information is true and complete to the best of the applicant's knowledge and belief.

10-003.04F The Department will consider only complete applications. If the Department determines an application is incomplete, the Department will, within 7 days of receipt of the application, notify the applicant by certified mail - return receipt requested of the information necessary to complete the application. The applicant will have 10 days from the date of mailing of the notice to provide the Department with the information necessary to complete the application. The Department will retain the application pending submission of the additional information. If an applicant fails to complete the application within the 10 day period, the Department will return the application to the applicant, and the applicant will be required to reapply in order to be considered for licensure/certification. To be complete, an application must include all of the information required in 178 NAC 10-003.04.

10-003.04G An applicant may submit additional documents or information as the applicant may consider relevant to the application and to compliance with the Act and 178 NAC 10.

10-003.04H An individual may apply for 1 or more licenses and 1 or more certificates of competency under a single application. The Department issues licenses/certificates of competency to individuals for any category or combination of categories for which they have passed any required examination and otherwise meet the requirements of the Act and 178 NAC 10.

10-003.04I The Department must act within 90 days upon all completed applications for licensure or certificates of competency.

10-003.05 Renewal of Licenses/Certificates

10-003.05A Expiration and Renewal Period: All licenses/certificates issued by the Department under the Act and 178 NAC 10 expire on December 31 of the year for which issued.

10-003.05A1 The Department must on or before November 1 of each year mail a notice of renewal statement to all license/certificate holders by regular first class mail addressed to him/her at his/her last place of residence as noted upon its records notifying them of the expiration date and of the fees for renewal for the next ensuing year for their respective license/certificate.

10-003.05A2 A license/certificate holder may renew his/her license/certificate on or before December 31 of each year. If a license/certificate holder has not made application and paid for renewal of his/her license/certificate on or before December 1, the Department must notify him/her by registered mail addressed to him/her at his/her last place of residence as noted upon its records on or before December 15 that the license/certificate will expire.

10-003.05A3 If the license/certificate holder does not renew the license/certificate on or before December 31 or the first working day thereafter, it will expire, and the Department must send a second notice by certified or registered mail on or before January 15 advising him/her (1) of the failure to renew and (2) that the license/certificate has expired.

10-003.05A4 The Department must suspend action for 60 days following the date of expiration, and upon the receipt of the renewal fee and the late fee as established in 178 NAC 11, within 60 days of expiration, must renew the license/certificate without examination.

10-003.05A5 The Department will not renew an expired license/certificate after the 60 day period.

10-003.05B There will be a rebuttable presumption that an applicant for renewal of a license/certificate continues to meet the requirements s/he met for initial licensure/certification except each applicant for renewal must submit proof:

1. That s/he has met or is exempted from meeting the continuing education requirements in 178 NAC 11;
2. That s/he has passed the examination required for his/her license by 178 NAC 10 if s/he is a holder of a temporary license;
3. That s/he, if a license holder has in force a policy of public liability and property damage insurance as required by 178 NAC 10-003.02 item 5; and
4. Each applicant must pay the applicable fee set by the Board in 178 NAC 11 for the license/certificate to be renewed.

10-004 DISCIPLINARY ACTION AND OTHER SANCTIONS

10-004.01 Failure to Meet Qualifications for License/Certificate: The Department will deny an application for a license/certificate or refuse renewal of a license/certificate when an applicant or license/certificate holder fails to meet the requirements of the Act or 178 NAC 10 for an initial license/certificate, or for a renewal license/certificate.

10-004.02 Disciplinary Action: In cases other than those relating to failure to meet the requirements for an initial license/certificate, the Department may deny, refuse renewal of, suspend, limit or revoke licenses/certificates or may take other disciplinary action for any of the following acts or offenses:

1. Practice of fraud or deceit in obtaining a license/certificate;
2. Violation of the Act or any standards, rules, or regulations adopted and promulgated pursuant to the Act. It is a violation subject to disciplinary action under this section:
 - a. For one having a certificate as a water well drilling supervisor to supervise the installation of pumps or pumping equipment unless that person also holds a certificate as a pump installation supervisor;
 - b. For one having a certificate as a pump installation supervisor to supervise the construction of a water well unless that person also holds a certificate as a water well drilling supervisor;
 - c. For one having a certificate as a pump installation supervisor or as a water well drilling supervisor to engage in doing either unless:
 - (1) That person is licensed as a pump installation contractor or water well contractor, or
 - (2) That person is in the employ of a business engaged in such functions whose principal officer, director, manager or owner-operator is licensed as a pump installation contractor or as a water well contractor, as appropriate, except when s/he is performing such functions on his/her own land for the purposes stated in Neb. Rev. Stat. §§ 46-1209, 46-1210, 46-1213, or 46-1214.
 - d. For one having a certificate as a water well monitoring technician or a natural resources ground water technician to supervise the construction of a water well, the installation of pumps and pumping equipment, or the decommissioning of a water well unless:
 - (1) That person is certified as a water well drilling supervisor or pump installation supervisor, as appropriate, or
 - (2) That person is licensed as a water well contractor or pump installation contractor, as appropriate, except when s/he is performing such functions on his/her own land for the purposes

stated in Neb. Rev. Stat. §§ 46-1209, 46-1210, 46-1213, 46-1214, or 46-1233.

3. Incompetence or gross negligence in the performance of any activity for which licenses/certificates are issued pursuant to the Act;
4. Conduct or practices detrimental to the health or safety of persons hiring the services of a license/certificate holder or of members of the general public;
5. Practice of the trade fraudulently, beyond the authorized scope, or with manifest incapacity;
6. Practice of the trade while the ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical disability;
7. Permitting, aiding, or abetting the practice of the trade or the performance of activities requiring a license/certificate by a person not licensed/certified to do so;
8. Having had a license/certificate denied, refused renewal, limited, suspended, or revoked or having been disciplined in any other manner by another state or jurisdiction to practice water well construction, water well drilling, water well decommissioning, or pump installation based upon acts by the applicant, license/certificate holder similar to acts described in 178 NAC 10-004.02. A certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license/certificate or the taking of other disciplinary action by another state or jurisdiction is conclusive evidence;
9. Unprofessional conduct which includes:
 - a. In an investigation by the Department of any alleged violation, refusal to cooperate or furnish accurate evidentiary information legally requested;
 - b. Refusing to provide services to a person because of the person's race, religion, color, sex, or national origin;
 - c. Lack of appropriate direction, collaboration, or direct supervision of an individual employed by, supervised by, or assigned to the license holder or certificate holder in the practice of water well construction or pump installation;
 - d. Failure to keep and maintain adequate records of water well construction, water well decommissioning, and pump installation services. Adequate records mean legible business records containing, at a minimum, sufficient information to identify the water well constructed or decommissioned or the pump installed, including, but not limited to parts and materials used, the result of the water well construction or pump installation, the well log, and the water well registration form or number;

- e. Construction of a water well without a required permit or the aiding or abetting of water well work by another person who is unlicensed;
 - f. Engaging in activities regulated by the Water Well Standards and Contractors' Licensing Act without the appropriate current active license or certificate.
 - g. Falsification of records related to the construction or decommissioning of water wells, or installation of pumps and pumping equipment.
10. Practice of the trade while the license/certificate to do so is suspended or practice of the trade in contravention of any limitation placed upon the license/certificate; or
11. Failing to file a water well registration required by subsection(1), (2), (3), (4), or (5) of Neb. Rev. Stat. § 46-602 or failing to file a notice required by subsection (7) of Neb. Rev. Stat. § 46-602.

10-004.03 Procedure: If the Department denies, refuses renewal of, suspends, or revokes a license/certificate or otherwise disciplines a license/certificate holder for any of the reasons enumerated in the Act, it will send to the applicant, license/certificate holder, by certified or registered mail, a notice setting forth the specific reasons for the proposed action. The denial, refusal of renewal, suspension, or revocation, or other disciplinary action becomes final 30 days after the mailing of the notice unless the applicant or license/certificate holder, within the period, gives written notice of a desire for a hearing. The applicant or license/certificate holder will then be given an opportunity for a formal hearing before the Department and will have the right to present evidence on his/her own behalf. On the basis of the evidence presented, the action in question will be affirmed or set aside, and a copy of the decision setting forth the findings of fact and the specific reasons upon which the decision is based will be sent by either certified or registered mail to the applicant or license/certificate holder. The decision becomes final 30 days after the copy is mailed, unless the applicant or license/certificate holder, within the period, appeals the decision pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920. Hearings before the Department are conducted in accordance with §§ 84-901 to 84-920 and 184 NAC 1, the Rules of Practice and Procedure for the Department.

10-004.03A All proceedings under the Act shall be summary in nature and triable as equity actions. Affidavits may be received in evidence at the discretion of the Director of Regulation and Licensure. The Department may administer oaths, subpoena witnesses and compel their attendance, issue subpoenas, and require the production of books, accounts, and documents in the same manner and to the same extent as a district court. Depositions may be used by either party.

10-004.03B Upon the completion of any hearing, the director may enter an order to exercise any or all of the following powers irrespective of the petition:

- 1. Issue a censure or reprimand against the license/certificate holder;
- 2. Suspend judgment;
- 3. Place the license/certificate holder on probation;

4. Place a limitation on the license/certificate and upon the right of the license/certificate holder to practice trade to the extent, scope, or type of practice, for the time, and under the conditions as are found necessary and proper. The director consults with the Board in all instances prior to issuing an order or limitation;
5. Impose a civil penalty under Neb. Rev. Stat. § 46-1240. The amount of the penalty will be based on the severity of the violation;
6. Enter an order of suspension;
7. Enter an order of revocation; or
8. Dismiss the action.

10-004.03C If a license/certificate holder fails to appear, either in person or by counsel, at the time and place designated in the notice, the director, after receiving satisfactory evidence of the truth of the charges, will order the license/certificate revoked or suspended or will order any other disciplinary action.

10-004.03D A license/certificate holder may appeal any order issued under the Act.

10-004.03E If an order issued under the Act is adverse to the license/certificate holder, the costs will be charged to him/her. If the Department is the unsuccessful party, the costs will be paid out of any money in the Department. Witness fees and costs may be taxed according to the rules prevailing in the district court. All costs accrued at the instance of the Department when it is the successful party, which the Department certifies cannot be collected from the defendant, will be paid out of any available funds in the Department.

10-004.04 Other Sanctions

10-004.04A In addition to the other penalties provided in the act, a person may be enjoined from continuing activities for

1. Failing to employ or use at least one individual appropriately licensed/certified and available, in accordance with Neb. Rev. Stat. § 46-1233, or
2. Engaging, without a license/certificate for such activities, in:
 - a. The construction of water wells,
 - b. The decommissioning of water wells,
 - c. The installation of pumps and pumping equipment, or
 - d. The measuring of groundwater levels, the collection of groundwater samples from existing water wells, or the inspection of installed water well equipment, pumping systems, or chemigation regulation devices.

10-004.04B Criminal and Civil Sanctions for Violation of Neb. Rev. Stat. § 46-1239

10-004.04B1 Violations

1. Failure to employ or use at least one individual appropriately licensed/certified and available, in accordance with Neb. Rev. Stat. § 46-1233, or
2. Engaging, without a license/certificate for such activities, in the construction of water wells, the installation of pumps and pumping equipment, or the decommissioning of water wells.

10-004.04B2 Possible Penalties

1. Criminal: Class II misdemeanor carries a maximum sentence of 6 months imprisonment or \$1000 fine or both.
2. Civil Penalty: an assessment of not more than \$1000 for each day the violation occurs.

10-004.04C Criminal and Civil Sanctions for Violation of Neb. Rev. Stat. § 46-1240

10-004.04C1 Violation:

10-004.04C1a Engaging in or employing or using a person who engages in any of the following activities without complying with the standards adopted and promulgated pursuant to the Water Well Standards and Contractors' Licensing Act:

1. Construction of water wells;
2. Installation of pumps and pumping equipment;
3. Measuring of groundwater levels;
4. Collection of groundwater samples from existing wells;
5. Inspection of installed water well equipment, pumping systems, or chemigation regulation devices;
6. Failure to decommission an illegal water well;
7. Decommissioning of water wells.

10-004.04C2 Possible Penalties

1. Class III misdemeanor carries a maximum sentence of 3 months imprisonment or \$500 fine or both.
2. Civil Penalty
 - a. An assessment of not more than \$500 for each day an intentional violation occurs, and
 - b. May be enjoined from continuing the activity, including a mandatory injunction.

10-004.05 Probation: The director may discipline a license/certificate holder by placing him/her on probation and requiring the following:

1. The license/certificate holder to obtain additional professional training and to pass an examination upon the completion of the training; or
2. To restrict or limit the extent, scope, or type of practice of the license/certificate holder upon consultation with the Board.

10-004.06 Temporary Suspension or Limitation: The Department may temporarily suspend or limit a license/certificate without notice or hearing if the Director of Regulation and Licensure determines that there is reasonable cause to believe that grounds exist under Neb. Rev. Stat. § 46-1235 for the revocation, suspension, or limitation of the license/certificate and that the license/certificate holder's continuation in practice would constitute an imminent danger to public health and safety. Simultaneously with any such action, the Department will institute proceedings for a hearing on the grounds for revocation, suspension, or limitation. The hearing will be held no later than 15 days from the date of the temporary suspension or limitation. The Department will grant a continuance of the hearing upon written request of the license/certificate holder, and the continuance will not exceed 30 days. An order of temporary suspension or limitation takes effect when served in person upon the license/certificate holder. A temporary suspension or limitation must not be in effect for a period in excess of 180 days. At the end of the period, the license/certificate will be reinstated unless the Department has revoked, suspended, or limited the license/certificate after notice and hearing.

10-004.07 Any person who files or attempts to file with the Department any false or forged diploma or certificate or affidavit of identification or qualification is guilty of forgery.

10-004.08 Any person who presents to the Department a diploma or certificate of which s/he is not the rightful owner for the purpose of procuring a license/certificate, who falsely impersonates anyone to whom a license/certificate has been issued by the Department, who falsely holds himself/herself out to be a person licensed/certified by the Department, or who aids and abets another who is not licensed/certified by the Department, or who aids and abets another who is not licensed/certified to practice any trade for which a license/certificate is required by the Act in practicing the trade is guilty of a Class IV felony.

10-005 REINSTATEMENT OF LICENSES/CERTIFICATES

10-005.01 Reinstatement After Disciplinary Action: The Department may reinstate, for good cause shown, any license/certificate that has been denied, refused renewal, suspended or revoked under Neb. Rev. Stat. § 46-1235 of the Act subject to the following:

10-005.01A A person who has been disciplined by means other than suspension or revocation of his/her license/certificate may apply for reinstatement of the license/certificate at any time;

10-005.01B A person whose license/certificate has been revoked may apply for reinstatement of the license/certificate after a period of not less than 1 year has elapsed from the date of revocation;

10-005.01C A person seeking reinstatement of a license/certificate that has been subject to disciplinary action must submit an application for reinstatement to the Department. The application must be accompanied by at least 2 verified recommendations of the activities of the applicant since the date of the suspension, revocation, or other discipline. An applicant for reinstatement must meet the continuing education requirements of Neb. Rev. Stat. § 46-1225 before reinstatement;

10-005.01D In determining whether to approve an application for reinstatement, the Department may:

1. Investigate and consider the activities of the applicant since the disciplinary action was taken, including, but not limited to, activities prohibited by the Act, the act or offenses for which disciplinary action was taken, the applicant's conduct while the license/certificate was in good standing, and the applicant's general reputation for truth, professional ability, and good character,
2. Require the applicant to take additional training, and
3. Require the applicant to pass the examination.

10-005.01E An applicant for reinstatement may appeal the Department's denial in accordance with the Administrative Procedure Act.

10-005.01F No license may be reinstated if the former licensee fails to provide sufficient evidence of adequate restitution to any person suffering damages or injury as a result of the actions of the former licensee governed by the Act or rules and regulations adopted and promulgated under the Act.

10-005.02 Reinstatement After Expiration: The Department may reinstate any license/certificate that has expired following the failure by the license/certificate holder to renew under Neb. Rev. Stat. § 46-1236 of the Act and 178 NAC 10.

10-005.02A After December 31 and before 60 days following the date of expiration, an individual whose license/certificate has expired is not required to take the examination to reinstate the license/certificate. An individual who has not renewed the license/certificate within 60 days following the date of expiration is not eligible for reinstatement of the license/certificate without passing the examination prescribed by the Board for reinstatement of the license/certificate.

10-005.02B A person seeking reinstatement of a license/certificate that has expired must submit an application for reinstatement to the Department. The application must include the information required in 178 NAC 10-003.04 and 10-003.04A.

10-005.03 Complete Applications: The Department considers only complete applications. If the Department determines that an application is incomplete, the Department will, within 7 days of the date of application, notify the applicant of the information necessary to complete the application. The Department will retain the application pending submission of the additional information. The applicant has 10 days from the date of mailing of the notice to provide the Department with the information necessary to complete the application. If the applicant fails to

complete the application within the 10 day period, the Department will return the application to the applicant, and the applicant must reapply in order to be considered for reinstatement of licensure/certification. To be considered complete, an application must include the information required in 178 NAC 10-003.04.

10-005.04 Denial of Applications for Reinstatement: If the Department denies an application for reinstatement of a license/certificate, it must send to the applicant, by registered mail, a notice setting forth the specific reasons for the proposed action. The denial becomes final 30 days after the mailing of the notice unless the applicant, within the period, gives written notice to the Department of a desire for hearing. The applicant is then given an opportunity for formal hearing before the Department and has the right to present evidence on his/her own behalf. On the basis of the evidence presented, the denial will be affirmed or set aside, and a copy of the decision setting forth the findings of fact and the specific reasons upon which the decision is based will be sent by either certified or registered mail to the applicant. The decision becomes final 30 days after the copy is mailed unless the applicant, within the period, appeals the decision pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920. Hearings before the Department are conducted in accordance with Neb. Rev. Stat. §§ 84-901 to 84-920 and 184 NAC 1, the Rules of Practice and Procedure of the Department.

10-006 EXAMINATION OF APPLICANTS FOR LICENSURE/CERTIFICATION

10-006.01 Type and Categories: The examination for licenses/certificates must be designed in accordance with Neb. Rev. Stat. § 46-1223. Applicants for certification as a water well monitoring technician must successfully complete the examination sections described in 178 NAC 10-006.01 items 1 and 2. Applicants for licensure/certification as a water well contractor, water well drilling supervisor, pump installation contractor, or pump installation supervisor must successfully complete the applicable examination sections described in 178 NAC 10-006.01 items 1 and 3. Applicants for certification as a natural resources ground water technician must successfully complete the examination section described in 178 NAC 10-006.01 item 4. All examinations are written unless special hardship provisions apply, and consist of the following:

1. Section I, the "Nebraska Section", which examines the applicant's knowledge of Nebraska minimum standards for water wells and water well pumps and pumping equipment, the geological characteristics of the State of Nebraska, and the Act, rules and regulations adopted pursuant to the Act and other laws and regulations as may apply to groundwater and the water well industry.
2. Section II, the water well monitoring category, which examines the applicant's knowledge in water sampling practices and techniques and measuring groundwater levels.
3. Section III
 - a. For applicants for licensure as a water well contractor or certification as a water well drilling supervisor, the special knowledge category consists of current drilling practices and techniques in general drilling and/or environmental drilling.
 - b. For applicants for licensure as a pump installation contractor or for certification as a water well pump installation supervisor, the special

knowledge category consists of current pump installation practices and techniques.

4. Section IV, the natural resources ground water technician category which examines the applicant's knowledge concerning the inspection of chemigation systems, measuring and recording static water levels, inspecting and servicing flow meters, and taking water samples.

10-006.02 Examination Contents: The Department with the approval of the Board may contract with examination development consultants, water well technical experts or other technical experts as deemed necessary to prepare the examinations and may assign a member or members of the Board to work with the consultants and technical experts to assure that the requirements of this rule and regulation are complied with. All persons holding a license/certificate under the Act, or any other persons involved in developing an exam are not allowed to take the exam for a period of 3 years after completion of the exam.

10-006.03 Passing Scores: All applicants taking the examination must achieve a score of at least 70% on each required examination section(s) to successfully complete the examination requirements for licensure/certification under the Act. When an applicant satisfactorily passes an examination section as herein required, the applicant need retake only those section(s) which have not yet been passed.

10-006.04 Board Representation at Examinations: The Board must be represented at all examinations by 1 or more members of the Board or a Board approved proctor who will observe details of the examination and report to the Board.

10-006.05 Review Materials: The Board must, to the extent possible, provide to each applicant for licensure/certification a list of published or unpublished materials and the source of each which may be useful as teaching or review materials in preparation for the examination. The list must specify that materials listed thereon may not necessarily cover all matters tested.

10-006.06 When Required: Examination is required for licensure/certification under the Act for:

1. All applicants for initial regular licensure/certification; and
2. All applicants for reinstatement of licenses/certificates which expire without renewal by the license/certificate holder in accordance with 178 NAC 10-003.05.

10-006.07 Special Arrangements

1. Administering Examination - Hardship Exceptions: In case of hardship, and with good and sufficient cause shown, the Board may provide for special arrangements for administering the examination which to the extent possible will accommodate the hardship without compromising the examination purposes. Hardships may include but not be limited to reading difficulties, physical skills limitations or absence from the state during regular examination dates. Accommodations may include special proctors or readers, oral examination, dictation of answers or non-resident proctor.

2. Hardship Application: Any individual who believes s/he may have good and sufficient cause to request a hardship exemption may request the Board to review his/her petition for hardship ruling by submitting a written request which includes:
 - a. A completed application for license/certificate;
 - b. A written description of the hardship;
 - c. A suggestion of the accommodation requested.
3. Recommendation to Department: The Board reviews each hardship request submitted and approves or denies it. If the Board approves the request, it notifies and directs the Department to make the accommodation.

10-006.08 When Not Required: Upon a finding by the Board that a current license holder in a business engaged in the construction of water wells or in a business engaged in the installation of pumps and pumping equipment has died and that business cannot function unless the applicant is issued a temporary license or upon a finding by the Board of other good cause and a recommendation by the Board that a temporary license should be issued without examination, the Department will issue a temporary license to the applicant who meets all other qualifications for the requested license.

10-006.08A Hardship Licensing: The Board may upon application recommend that the Department grant a temporary hardship license without examination provided all other requirements are fulfilled by the applicant when the current license holder for the same contractor has died or for other good documented cause.

10-006.08B Application: Any individual who believes s/he may have good and sufficient cause to request a temporary hardship license may request the Board to review his/her petition for a ruling by submitting a written request which includes:

1. A completed application for a license/certificate;
2. A written description of the hardship.

10-006.08C Recommendation to Department: The Board must review each such request submitted and must recommend approval or denial of the request to the Department to issue the temporary hardship license.

10-006.09 Application

1. Initial Applicants: Initial applicants who wish to take the examination for licensure/certification under the Act make application to do so by submitting an application for licensure/certification as set forth in 178 NAC 10-003.04.
2. Reinstatement Applicants: Persons wishing to take the examination prescribed by the Board for reinstatement of their license/certificate after expiration apply to do so by submitting an application for reinstatement after expiration as set forth in 178 NAC 10-005.02B and 10-005.03.

10-006.10 Eligibility for Examination: In order to be eligible to take the examination for licensure/certification under the Act, an applicant must meet all qualifications necessary for the issuance of the appropriate license/certificate other than examination. Applicants for the

examination required for reinstatement must meet all requirements for reinstatement of the license/certificate other than examination.

10-006.11 Time and Place of Examination: The Department will hold examinations for licensure/certification at least 4 times each year, with no less than 1 examination during each calendar quarter, in Lincoln, Nebraska, at the test sites the Department, with the advice of the Board, may determine.

10-006.11A Should a regularly scheduled examination be canceled due to inclement weather or other cause, a new examination date will be scheduled and notice given to all eligible candidates.

10-006.11B Special arrangements for administering examinations may be made by the Department upon recommendation by the Board in cases of hardship determined by the Board.

10-006.12 Notice to Examinees: Applicants eligible for examination will be provided with:

1. Notice of the date, time and place of the examination;
2. An admission card or receipt and information on the requirements for admission to the examination site;
3. Information on equipment or materials needed for the examination, if any;
4. Information on the general format of the examination and tentative schedule of examination periods;
5. At the request of the applicant, copies of Department and Board regulations pertinent to the examination and Nebraska law covered in the examinations; and
6. Other information pertinent to the conduct of the examination as the Board and Department may determine.

10-006.13 Administration: Examinations may be administered by representatives of the Department, Board members or their designated representatives, or a combination of the same. The identity of examinees must not be disclosed on the examination papers in such a way as to enable the examiner to know by whom it was written.

10-006.14 Examination Security: Subject to the provisions of 178 NAC 10-006.15 and 10-006.16, no applicant, license/certificate holder, or persons other than Department staff, Board members, or legal representatives or test experts consulting with the Department or Board, will be provided with advance copies of or access to examination questions, answers, or answer keys, with copies of past or proposed questions, answers or answer keys, or any information disclosing the content of or compromising the integrity of any examinations or portions of examinations under development, in use, or proposed to be used.

10-006.14A All examination materials must be kept under lock and key when not under review by Department staff, Board members, or Department legal counsel, or test consultants to the Department and Board, in use during an examination, or under

review by an examinee or his/her legal representative in accordance with 178 NAC 10-006.16, item 8.

10-006.14B The Department must maintain a log of persons provided access to examination questions, answers, or other examination materials in a form as agreed between the Department and Board.

10-006.14C Any applicant or license/certificate holder who subverts an examination may be subject to discipline under 178 NAC 10-004.

10-006.15 Security Procedures During Examination: Security procedures during the examination include but are not limited to:

1. Admission Identification: All examinees are required to show at least one piece of picture identification and an admissions card provided by the Department.
2. Late Admissions: No late admissions to the examination room are allowed. Any time following commencement of verbal instructions by the proctor is considered late.
3. Distribution of Materials: Examination books, sheets and/or answer sheets will be handed individually and directly to each examinee. Each examinee will receive only one examination book, sheet, and/or answer sheet.
4. Examinations Instructions: The chief proctor will read verbatim the instructions for the examination and will not repeat them.
5. Answering Questions: The proctors will not answer any questions concerning content during the examination. If an examinee thinks a test item is misprinted or incorrect, the examinee will be told to answer the question as it reads. The examinee will be assured that a report of this concern will be made before the examinations are scored.
6. Leaving the Examination Room: Examinees may be permitted to go to the restroom unescorted one at a time. The proctor must hold the examinee's test book, sheet, and/or answer sheet during this absence. No additional testing time is allowed.
7. Leaving the Examination Permanently: If an examinee must leave the examination because of an emergency or illness, the examinee's test book, sheet, and/or answer sheet will be collected. If an examinee finishes the examination early s/he may leave the examination room after all materials are collected; however, to ensure proper security of test materials, no examinee may leave the room during the last 10 minutes of the testing time.
8. Permitted Materials: Examinees must have nothing on their work surface or area except the test book, sheet, and/or answer sheet, identification/admission card, and any materials or equipment needed to respond to exam questions.

9. Taking the Examination: No examinee may work ahead or behind when the examination requires all examinees to work simultaneously on one section or part of the examination. Examinees must stop writing at the end of the session. No extra time will be allowed.
10. Notes: No examinee may write notes concerning the examination nor may examinees remove pages from the test or leave the examination room with any materials held during the examination.
11. Communications: Examinees must not communicate with each other in any way after the examination questions have been distributed.
12. 10-Minute Warning: A warning will be given when there are 10 minutes left in the examining session.
13. Observers: No persons are allowed in the examination room other than the examinees, Board members, Department staff, designated proctors, or their representatives administering the examination.
14. Proctors: If more than one proctor is necessary for test administration, 1 proctor will be designated as chief proctor. The chief proctor has the authority and responsibility to assure that the examination is conducted under the conditions and procedures required by 178 NAC 10 with the assistance of the other proctors.
15. Disruptive Behavior: An examinee who exhibits behavior that disrupts or interferes with the testing conditions for other examinees and who fails to cease the behavior will be removed from the examination room after failure to comply with 1 warning.
16. Irregular Behavior: An examinee who is suspected of giving, copying, or otherwise receiving unauthorized information about the contents of the examination will be immediately removed from the examination room and have his/her application for licensure/certification returned as unacceptable.

10-006.16 Access to Examinations: All persons who take and fail examinations required under the Act and Department and Board regulations may review their own answers subject to the following conditions:

1. Review may take place only after results of the examination have been issued by the Department.
2. Photographic identification is required.
3. Review must take place in the offices of the Department during regular business hours.
4. Review may take place only in the presence of a representative of the Department. A representative of the Board may also be present.
5. The answer sheet may not be taken from the site designated for review.

6. Answers may not be copied from the answer forms. Notes may be made but must be limited to the question number and any objections, challenges or questions concerning examination questions and answers. The Department will review notes and may confiscate them if, in the opinion of the representative, the notes are likely to compromise the integrity of the examination.
7. No questions may be asked of or answered by the Department or Board representative during review concerning the examination or answers. Questions, objections, or challenges may be submitted to the Board in writing for its consideration.
8. The examinee may have legal counsel present during review or authorize, in writing, legal counsel to review the examination and answer sheet in his/her absence. Review by counsel is subject to the same conditions and terms as those for the examinee.

10-006.17 Discovery on Examinations During Appeals: Unsuccessful examinees in the process of administrative appeal of the denial of a license/certificate for failure of the required examination may review their own answer sheets as set forth in 178 NAC 10-006.16 and the questions and model answers marked wrong or not given full credit on their answer sheets. No copies of examination materials are provided except upon order of the Director of Regulation and Licensure or a court of competent jurisdiction. If the number of wrong answers is so great that release of copies of the records will jeopardize the security of the examination, or if access to and/or copies of the questions is sought, the Director or a court of competent jurisdiction, on motion, may order disclosure of such records as are relevant under such conditions as are warranted in the circumstances. Conditions on records found by the Director to be subject to disclosure may include, but are not limited to:

1. Restrictions on who may possess the copies;
2. Restriction on the number of copies thereto which may be made;
3. Restriction on distribution of any copies provided;
4. Restriction of the persons who may review the material or copies thereof, including limitations on the examinee;
5. Procedures for maintaining security of the copies and for documenting or logging access provided;
6. Security of the examination during hearing and further appeal; and/or
7. Other measures as may be deemed necessary to ensure that security is maintained.

10-006.18 Access to Other Examination Materials: Any person may have access to public records concerning examinations and their development, or statistical information available, if any, relating to examination results.

10-006.19 Failure of Examination: Failure of an examination required for licensure/certification or reinstatement of a license/certificate results in denial of the application for the license/certificate or its reinstatement. Denials are subject to hearing in accordance with 178 NAC 10-004 or 10-005, as applicable.

10-006.20 Retakes of Examinations: An examinee who fails to pass an examination may, upon reapplication for licensure/certification or for reinstatement as set forth in 178 NAC 10-005.02, retake the examination at any regularly scheduled examination.